

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel E. Gill, Thomas C. McDermott, and
Jay T. Holmes,

Plaintiffs,

v.

Bausch & Lomb Supplemental Retirement
Income Plan I, Bausch & Lomb
Incorporated, and Compensation
Committee of the Bausch & Lomb Board
of Directors,

Defendants.

Civil Action No. 09-CV-6043 CJS

PROPOSED DISCOVERY PLAN

Pursuant to this Court's October 6, 2009 Order (Doc. No. 28), Defendants and Plaintiffs, through undersigned counsel, hereby submit the following Proposed Discovery Plan¹:

1. **Magistrate Judge Jurisdiction.** The parties do not consent to proceed before the Magistrate Judge.

2. ***Fed. R. Civ. P. 26(a)* Disclosures.** The parties will exchange *Fed. R. Civ. P. 26(a)* disclosures on November 12, 2009.

3. **Amendment of Pleadings/Additional Parties.** The parties propose that they have until December 1, 2009 to file any motions to amend pleadings and/or add additional parties.

¹ The parties conferred three times in an attempt to reach consensus as to all the deadlines set forth. Where the parties could not reach an agreement, the Proposed Discovery Plan sets forth each party's view for the Court's consideration. The parties will be prepared to discuss their positions as to the various scheduling issues.

4. **Completion of Fact Discovery.** Plaintiffs propose that fact discovery be completed by Thursday, September 30, 2010.

Defendants propose that fact discovery be completed by 90 days from the *Fed. R. Civ. P.* 16 Conference, which is Wednesday, February 10, 2010.

5. **Expert Discovery.** The parties propose that the deadline to exchange primary expert reports be 30 days from the completion of fact discovery, and rebuttal expert reports shall be 30 days from the exchange of primary expert reports, and that the deadline to complete all expert discovery shall be 30 days from the exchange of rebuttal expert reports.

6. **Motions to Compel Discovery.** The parties propose that the deadline to file any motions to compel discovery shall be 30 days prior to the close of fact discovery.

7. ***Fed. R. Civ. P. 26(c)* Orders.** The parties will confer with respect to negotiation of an appropriate confidentiality/protective order, and will submit jointly a proposed order to the Court on or before November 12, 2009.

8. **Discovery Limitations.** Plaintiffs propose to extend the discovery limitation provided under *Fed. R. Civ. P.* 30, to permit plaintiffs to notice up to 15 depositions.

Defendants submit that there should be no changes to the discovery limitations set forth in *Fed. R. Civ. P.* 30, 33, or 34.

9. **Electronically Stored Information.** The parties agree that electronically stored information (“ESI”) will be produced in TIFF or PDF format with meta data as may reasonably be requested by the receiving party, together with a load file for viewing in a commercially available document review tool specified by the receiving party.

10. **Dispositive Motions.** The parties propose that the deadline to file dispositive motions shall be 45 days after the close of expert discovery.

11. **Settlement Conference.** The parties do not believe that a settlement conference or other alternative dispute resolution would be fruitful at this time.

12. **Trial.** There is no jury trial required in this ERISA action. The parties agree that, following the close of discovery, this matter may be ripe for adjudication on dispositive motion. If the matter is not resolved on dispositive motion, the parties estimate that a bench trial would last no more than 5 days.

DATED: November 6, 2009.

Respectfully submitted,

PROSKAUER ROSE LLP

By: /s/ Howard Shapiro
Howard Shapiro (*admitted pro hac vice*)
Nicole A. Eichberger (*admitted pro hac vice*)
PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130
Telephone: (504) 310-4088
Fax: (504) 310-2022

--AND--

GEIGER AND ROTHENBERG, LLP

/s/ David Rothenberg
David Rothenberg
GEIGER AND ROTHENBERG, LLP
800 Times Square Building
45 Exchange Street
Rochester, New York 14614
Telephone: (585) 232-1946

Attorneys for Defendants

AND

WARD NORRIS HELLER & REIDY LLP

By: /s/ Harold A. Kurland
Harold A. Kurland (hak@wnhr.com)
Heidi S. Martinez (hsm@wnhr.com)
WARD NORRIS HELLER & REIDY LLP
300 State Street
Rochester, New York 14614
Telephone: (585) 454-0700

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on this 6th day of November, 2009, I served a copy of the Proposed
Discovery Plan via Electronic Case Filing upon all counsel of record.

/s/ Nicole A. Eichberger
NICOLE A. EICHBERGER